HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.969/2002

APPELLANT Vindeshwar Sai Paikra,
Age 30 years, S/o Negi Sai Paikra,
Caste – Kanwar, R/o Bamba,
Thana - Bagicha,
District – Jashpur (C.G.)

Versus

RESPONDENT STATE OF CHHATTISGARH

Appearance:

Shri S.K. Mishra, counsel for the appellant.

Shri Sushil Dubey, Govt. Advocate for the State.

ORAL JUDGMENT
(21.05.2007)

SUNIL KUMAR SINHA, J

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 26/4/2002 passed in S.T. No.53/2002 by the Second Additional Sessions Judge (FTC), Jashpurnagar (C.G.), whereby, the said Court after holding the appellant guilty of the offence punishable under Section 376 of IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.3000/-, in default of payment of fine to further undergo S.I. for 3 months.

This is a case in which the prosecutrix namely Ku. Santoshi, who was aged about 17 years on the date of incident, makes allegations that she was subjected to forceful sexual intercourse on 2 occasions by the appellant, firstly, on 12/4/2001 and secondly on 5/6/2001. According to her contention, she did not make any report about the forceful sexual intercourse committed on 12/4/2001. However, when a repeated act of forceful sexual intercourse was done on 5/6/2001, a written report vide Ex.P/11

was lodged by her in the Police Station on 6/6/2001. The case, according to the report, is that on 12/4/2001 at about 3 p.m., the prosecutrix was all alone in her house. At that time, the appellant came over there and committed forceful sexual intercourse against her. She did not take any action on this incident. Thereafter, on 5/6/2001, at about 7:00 p.m., when the prosecutrix had gone to answer the call of nature, the appellant met her in the way and dragged her to some distance to a nearby pit and committed forceful sexual intercourse against her, but this time, when he was committing sexual intercourse, on hearing the noise, Shatrughan (PW-7) came over there and witnessed the incident. Thereafter, the appellant ran away from the place of occurrence. Shatrughan took the prosecutrix to her mother and made complaints to her, on which, they decided to lodge a report and thereafter, a written report (Ex.P/11) was lodged. During the course of investigation, the prosecutrix was sent for medical examination, on which, Dr. (Smt.) Vinodini Bakhla (PW-10) examined her on 6/6/2001 and prepared her report (Ex.P/16 A). According to the said report, there were no external injuries on the person of the prosecutrix. Her breasts and uterus were enlarged. She was carrying pregnancy of 21 weeks and her hymen was old ruptured. She could not give a definite opinion regarding commission of rape on the victim. The site plans of both the places were prepared under Ex.-P/1 and Ex.-P/2 and bangles and pieces of bangles of the prosecutrix were also seized under Ex.-P/3. Another site plan (Ex.-P/5) was prepared by the Patwari – Ravi Narayan Rathia (PW-3). The underwear of the appellant was also seized under Ex.-P/7.

After completion of the usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar, from where, the matter was committed to the Court of Sessions Judge, Raigarh on 17/1/2002 and was received on transfer by the II Additional Sessions Judge (FTC), Jashpurnagar (C.G.), who ultimately, concluded the trial and passed the impugned judgment

of conviction and order of sentence. It is against this judgment of conviction and order of sentence awarded to the appellant, the appellant has preferred this appeal.

Conviction of the appellant is based upon the sole testimony of the prosecutrix namely Ku. Santoshi (PW-6) holding that the appellant, taking undue advantage of the situations committed forceful sexual intercourse against her.

Learned counsel for the appellant raises only one point. His submission is that according to the evidence of the prosecutrix and her mother, the matter appears to be one of consent and the conviction based upon the testimony of the prosecutrix deserves to be set aside.

On the other hand, learned counsel for the State opposes these arguments. He supports the judgment of conviction and order of sentence passed by the trial Court.

I have heard learned counsel for the parties at length and have also perused the records of the Sessions Trial.

So far as age of the prosecutrix is concerned, there is no dispute in this regard that she was above 16 years of age on the date of incident. According to the prosecution, she was about 17 years. If we examine her evidence, for the first incident, she deposed in para 2 that on 12/4/2001 the appellant had come to her house and had committed rape against her. At that time, her mother and father were not present in the house, as they had gone for doing labour work. She deposed that her menstruation has stopped from the said date. She has also deposed that her mother and father had said that this was the first mistake; therefore, she should forgive it. For the second incident, she deposed vide para 1 that on 5th of June in the last year, at about 7:00 p.m, when she was going towards the fields, the appellant started dragging her and from the fields, he took her to a nearby pit and thereafter committed sexual intercourse against her, she made alarm, on which, Shatrughan (PW-7) came over there. Seeing this, appellant

ran away from the place of occurrence. Thereafter, he (Shatrughan) caught her and took her to the house and she narrated the story to her mother and father. Shatrughan also narrated the story to them and then, the report was lodged.

PW-9 – Indramani is the mother of the prosecutrix. She has stated that appellant had committed sexual intercourse for 2 times against her daughter. About the first incident, they did not report the matter to the Police due to fear of their reputation. However, when the second time, sexual intercourse was committed, the matter was reported to the Police. About the second incident, she deposed that on the said date, Shatrughan brought her daughter to their house and told that the appellant has committed sexual intercourse against her. Her daughter also narrated the story to her, on which, they decided to report the matter and the report was lodged.

Shatrughan has also been examined as PW-7, but, he has completely turned hostile and has not supported the case of the prosecution. The brother of the prosecutrix namely Riparam has also been examined as PW-8. He has also deposed that after the second incident, his sister alongwith Shatrugan came to the house and said that appellant had committed rape against her. Shatrughan has also stated that appellant had committed sexual intercourse against his sister and thereafter, he returned back to his house, after which the report was lodged.

If we analyse the evidence of the prosecutrix in light of other evidence in this matter, particularly the evidence of mother and First Information Report, it would appear that according to the prosecution itself, for the first time she was subjected to sexual intercourse on 12/4/2001 at about 3:00 p.m. The incident had taken place in her own house when her mother and father were not present. She disclosed this incident to her father and mother or to her brother has not been brought on record, but according to the evidence of her mother, it appears, that the said incident was

known to her and even after knowing all this; no report of the said incident was lodged either by the prosecutrix or by her family members. They are giving explanation that they had forgiven the appellant for that time, but when the same act was repeated on 5/6/2001, they decided to lodge a report to the Police and then only, the report (Ex.P/11) was lodged in the Police Station. About the second incident, it comes that when on that date; the prosecutrix was going to answer the call of nature, the appellant met her in the way and forcefully dragged her to a nearby pit and there, he committed forceful sexual intercourse against her. Though the prosecutrix says that Shatrughan (PW-7) had reached to the spot after her alarm, but this story given by the prosecutrix is not supported by Shatrughan (PW-7), as he has completely turned hostile and has said that he does not know about the said incident.

If we look into the evidence of the prosecutrix and her mother, it would appear that both of them had said that the prosecutrix was brought to the house by this witness – Shatrughan (PW-7) and he had said to them that appellant was committing sexual intercourse against the girl in a pit. In fact, he was an eye-witness to the second incident. All these facts are mentioned in the Police statement of this witness – Shatrughan, which has been proved as Ex.-P/15, but after putting such statement before him, he expressed his denial about this statement. The statement of the prosecutrix as well as statements of mother and brother and further the Court evidence and the contents of the police statement of Shatrughan would show that, in fact, on the fateful day, the prosecutrix was taken by this appellant to a pit where he committed sexual intercourse against her and at that time, Shatrughan came over there, may be after hearing some noise, and witnessed the incident and took the girl to the house and made complaints to her mother. On this, mother had stated that now the repeated incident has taken place, therefore, the matter should

be reported to the Police and then only, a report in the Police Station was lodged by the prosecutrix under Ex.P/11.

All the above facts and circumstances of this case constrain this Court to take a view that the prosecutrix was a consenting party on both the occasions. The report was not lodged first time by her because the incident was not noticed by anybody and it came in the knowledge of the mother because ultimately, the prosecutrix carried pregnancy. For the second time, the matter was disclosed because the incident itself was witnessed by Shatrughan (PW-7), who anyhow reached to the spot and caught the prosecutrix red handed with the appellant in a pit while they were performing sexual intercourse.

In the facts and circumstances of this case, in the opinion of this Court, as stated above, a possibility of the prosecutrix being a consenting party has not been fully ruled out and on such evidence, conviction and sentence awarded to appellant cannot be sustained. It deserves to be set aside.

Accordingly, the appeal is allowed. The conviction & sentence awarded to the appellant are set-aside. He is acquitted of the charges framed against him.

It is stated that the appellant is in jail since 11/12/2001. If he has not been released so far, he be released forthwith.

Sd/-
Sunil Kumar Sinha
Judge

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